

## Explanatory Note

### 122-128 Hewlett Street, Bronte Development Application No. DA-304/2022 as modified by DA-304/2022/A

(Section 205 of the Environmental Planning and Assessment Regulation 2021)

#### Planning Agreement

The purpose of this explanatory note is to provide a summary to support the notification of a draft Planning Agreement under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

This explanatory note has been prepared in accordance with clause 205 of the *Environmental Planning and Assessment Regulation 2021*.

This explanatory note is not to be used to assist in construing the Planning Agreement.

#### 1 Parties

The parties to the Planning Agreement are Waverley Council (**Council**) of the one part and 128 Hewlett Street Pty. Limited (ACN 657 135 334) as trustee for the 128 Hewlett Street Trust (ABN 91 252 981 680) of the other part (**Developer**).

#### 2 Description of subject land

The land to which the Planning Agreement applies is the whole of the land being Lots 1-22 in Strata Plan 11235, more particularly described as Lots 1-22/SP11235 and CP/SP11235 known as 122-128 Hewlett Street, Bronte (**Land**).

The Developer is the registered proprietor of the Land.

#### 3 Description of Development

The proposed development comprises demolition of existing residential apartment building and construction of multi-level housing comprising nine dwellings with basement parking and swimming pools (**Development**).

#### 4 Background

On or about 21 July 2022 the Developer lodged a development application (DA-304/2022) with Council seeking to build ten Torrens title dwellings with the building height and FSR exceeding maximum standard (**Development Application**). The

Development Application was deemed refused by Council and the Developer subsequently lodged an appeal with the Land and Environment Court.

On 7 August 2023 an offer was made to Council by the Developer in connection with the Development Application, to enter into a planning agreement and to make a monetary contribution to be applied towards the Waverley Affordable Housing Program (**Public Purpose**) in accordance with Council's Planning Agreement Policy.

On 6 September 2023 Development Consent was granted by the Land and Environment Court (**Development Consent**).

On 27 September 2023 the Developer lodged a modification application to provide for the time of lodgement of security by way of Bank Guarantee (DA-304/2022/A) prior to the issue of any Construction Certificate that relates to any building work, other than demolition, excavation, piling, shoring and ancillary work for construction purposes including site hoardings and temporary site sheds that relates to works contained in the Development and made an updated offer to Council in connection with the Modification Development Application to enter into a planning agreement and to make the monetary contribution to be applied towards the Public Purpose in accordance with Council's Planning Agreement Policy.

The offer was in the same terms as the offer of 7 August 2023 except for the timing of provision of a Bank Guarantee by way of security under the Planning Agreement.

## **5 Summary of Objectives, Nature and Effect of the Planning Agreement**

The objective of the Planning Agreement is to secure a public benefit in connection with the Development Application so that the Development delivers a community benefit.

The Planning Agreement requires the Developer to pay to Council a monetary contribution in the amount of \$498,940.00 to be applied 75% towards the *Bronte Park and Beach Plan of Management* and 25% towards the Waverley Affordable Housing Program.

The monetary contribution is payable to Council prior to the issue of any Occupation Certificate for the Development.

The Planning Agreement is a binding relationship between Council and the Developer. The Planning Agreement requires the Developer to comply with certain requirements including registration of the Planning Agreement, provision of a Bank Guarantee and registration of a Caveat pending registration of the Planning Agreement. The Planning Agreement contains a number of machinery provisions including in relation to dispute resolution and enforcement.

The Agreement does not exclude the application of Sections 7.11, 7.12 or 7.24 of the Act to the Development and the monetary contribution is not to be taken into

consideration in determining any development contribution under Section 7.11 of the Act.

The effect of the Planning Agreement is a monetary contribution towards the Public Purpose stated above.

## **6 Assessment of the merits of the Planning Agreement**

### **(a) How the Planning Agreement promotes the public interest and the objects of the Act**

The Planning Agreement promotes the objects of the Act, in particular Section 1.3(a) of the Act, which is to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources and Section 1.3(d) of the Act, which is to promote the delivery and maintenance of affordable housing. These objects are met as the Planning Agreement secures a monetary contribution towards the *Bronte Park and Beach Plan of Management* which contains various planned upgrades to Bronte Park and Beach and towards the Waverley Affordable Housing Program for the delivery and maintenance of affordable housing.

Public interest is promoted by virtue of the Planning Agreement because it assists Council in delivering upgrades to Bronte Park and Beach including, but not limited to, upgrading or replacement of park shelters, amenities, seating, pathways, stairways and lighting.

Further, public interest is promoted by virtue of the Planning Agreement because it assists Council in the provision of affordable housing and housing for low income and disadvantaged people within the community.

In addition, it assists in facilitating a socially diverse and inclusive community and enabling diverse social and economic groups to have similar opportunities for accommodation in the Waverley Local Government Area.

### **(b) The impact of the Planning Agreement on the public or any relevant section of the public**

The Planning Agreement will benefit the public and local community including families, people of all ages and diverse communities, as it secures funds to put towards the delivery of Bronte Park and Beach upgrades which will positively affect the social and economic wellbeing of the precinct incorporating the Development and wider community. Both residents and visitors will benefit from the contribution under the Planning Agreement.

In addition, the Planning Agreement will benefit the public and local community as it seeks to improve and maintain access to affordable housing in the Waverley Local Government Area and will facilitate a diverse social mix.

There is considered to be no negative impact on the public arising from the Planning Agreement.

**(c) The planning purpose(s) served by the Planning Agreement**

The Planning Agreement facilitates the provision of (or the recoupment of the cost of providing) affordable housing and/or the funding of recurrent expenditure relating to the provision of affordable housing. The provision of affordable housing is the public purpose under Section 7.4(2) of the Act. In addition, the Planning Agreement facilitates the conservation or enhancement of the natural environment. The provision of affordable housing, public amenities and conservation or enhancement of the natural environment are public purposes under Section 7.4(2) of the Act.

The Planning Agreement implements Council policy and legislative provisions around affordable housing, public amenities and conservation or enhancement of the natural environment.

The Planning Agreement provides a reasonable means of achieving the planning purpose purposes set out above.

**(d) How the Planning Agreement promotes the guiding principles for Councils (previously referred to as Council's Charter) under section 8A of the Local Government Act 1993**

The Planning Agreement provides a means by which the Council shows a regard for the long term and cumulative effects of its decisions. The Council is conscious of a need for open space/recreational facilities as well as affordable housing in its local government area and how its decisions and policies impact seeking to fulfil these needs.

The Planning Agreement provides a means by which Council shows it bears in mind that it is the custodian and trustee of public assets and seeks to effectively plan for and manage the assets for which it is responsible and engages in long term strategic planning on behalf of the local community.

In addition, as the Planning Agreement is a means by which the Council can implement its Affordable Housing Policy, in doing so, Council exercises community leadership in an area of concern to the wider community.

**(e) Whether the Planning Agreement conforms with the Council's Capital Works Program**

The Planning Agreement is not inconsistent with the Council's Capital Works Program.

**(f) Whether the Planning Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The following requirements of the Planning Agreement must be complied with before:

- (i) A construction certificate which permits building works other than demolition, excavation, piling, shoring and ancillary work for construction purposes including site hoardings and temporary site sheds:** provision of a Bank Guarantee and registration of the Planning Agreement (requiring also the registration to take place no later than 14 days after the entry into the Planning Agreement).
- (ii) An occupation certificate is issued:** payment of the monetary contribution.
- (iii) A subdivision certificate is issued:** not applicable.